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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,634	10/15/2001	Kiyofusa Egashira	JP920000319US1	3272

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EXAMINER

POND, ROBERT M

ART UNIT	PAPER NUMBER
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3625

MAIL DATE	DELIVERY MODE
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05/22/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/977,634

Applicant(s)

EGASHIRA ET AL.

Examiner

Robert M. Pond

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

The Applicant amended claims 1, 2, 6, and 7. All pending claims 1-10 were examined in this non-final office action.

Response to Arguments

Applicant's arguments filed 28 February 2007 have been fully considered but they are not persuasive. The Examiner is suggesting (emphasis added) the Applicant consider a telephone interview for further discussion before filing a formal reply.

The Applicant's equations, algorithm, and tables produced by the equations executed by the algorithm of Figure 7 appears to be an elaborate embellishment of simply computing gross profit - i.e. sales less the cost of goods regardless of how the customer pricing was derived. This basic equation is notoriously old and well known in business arts and has been used for decades to estimate gross profits from contract customer sales or pending sales of a commodity product. For example as a VAR representative, it was a typical exercise for my corporate buyer in the early 1990's (pre-Internet/Web enablement) to identify multiple distributor sources for a commodity product (e.g. keyboard) to be supplied to contract customers wherein each customer may have either identical contract prices or different contract prices based on varying quantity requirements. The

corporate buyer would, based on the aggregate quantity of all customers, determine the lowest cost supplier using catalogs or by calling each supplier to fill the aggregate amount. Aggregate gross profit would be calculated based on individual gross profit from each customer. This is what I see from this application and nothing more. The claim element that eliminates automatic disqualification does not advance the thrust of the Applicant's invention of optimizing seller profit and furthers the advancement of this opinion.

Brodsky in view of Fischer provide a system and method of optimizing seller profit and covers the fundamental equation determining gross profit regardless of how elaborate the interim steps are to derive it.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

- 1. Claims 1-10 are rejected under 35 USC 103(a) as being unpatentable over Brodsky (US 6,751,597) in view of Fisher (Paper # 20051223, US 5,835,896).**

Brodsky teaches facilitating electronic commerce through adaptive trade specifications (ATS) and matchmaking optimization spanning the supply chain. Given a set of trader's ATS, the matchmaking (MM) optimization methods recommend specific transactions with other traders (i.e. against their ATS's) that are mutually agreeable and optimized the objective of the trader's ATS (e.g.

minimal price for a buyer, maximal profit for a seller). The recommended set of transactions will indicate exactly with whom the transaction should be made, the exact GIVE and TAKE items and their quantities, as well as other relevant parameters (e.g. price and profit). Brodsky teaches optimization methods that can recommend a set of buyers ATS's interested in a seller's products and a set of supplier ATS's necessary to supply the seller so that the seller's maximal profit objective is achieved (see at least abstract; col. 11, lines 34-54). ATS's formed through the use of wizards are input to the ATS matchmaker computer (see at least Fig. 1; Fig. 2; col. 1, line 5 through col. 5, line 60; col. 6, lines 20-42).

Brodsky further teaches:

- obtaining supply information including a plurality of supply quantities and a supply price that depends for each supply quantity that indicates a supply cost from at least one commodity supplier for a particular commodity item and arranging the information into a supply list for storage in a database, wherein the supply price lowers as the supply quantity increases; supplier constructs its ATS indicating profit objectives using quantity, pricing, and costs as parameters (see at least col. 4, line 44-53); stored in database (see at least Fig. 2 (201); Fig. 5A (501-519); col. 6, line 20 through col. 7, line 33); uses supplier wizard (see at least Fig. 1 (111); col. 6, lines 23-38).; volume buyers; supplier offering volume discounts (i.e. price lowers as quantity increases) (see at least col. 1, lines 40-42, 48-50).

- receiving purchase wish information including a desired purchase price and a desired purchase quantity for said particular commodity item from intending purchasers through a network for a predetermined period of time; storing the received purchase wish information in said database;
receives purchase information via an ATS based electronic mall, ATS based electronic auction (see at least Fig. 1 (101, 103, 105); col. 6, lines 23-42); time deadline as auction parameter; delivery time (see at least col. 2, lines 50-51; col. 11, line 25-28).
- after said predetermined period of time, collecting said purchase wish information stored in said database and producing a purchase wish list having the information arranged in a predetermined order; finds minimums and maximums of each ATS (please note: predetermined order created when determining maximum or minimums) (see at least col. 11, line 65 through col. 12, line 17).
- selecting an optimum combination of intending purchasers, selling quantities, selling prices, commodity suppliers, supply quantities, and supply prices by comparing only the desired purchase price and the desired purchase quantity of said purchase wish list with the supply price and supply quantity of said supply list by calculating a total profit using an iterative aggregation of profit for each additional intending purchaser; as noted above optimizes objective spanning the supply chain of buyers, sellers, suppliers using price, cost, profit, quantity, and/or time as ATS

constraints for each trader; helps a buyer achieve minimal total cost (see at least col. 5, lines 35-38; col. 11, lines 30-31).

Brodsky teaches all the above as noted under the 103(a) rejection and teaches a) delivery time as a constraint, b) trader's submitting bids and offers in an electronic marketplace for the purpose of exchanging goods/materials, c) implements a system that does not automatically disqualify a buyer based on price, and further discloses d) an ATS-based electronic marketplace comprising electronic auctions, electronic malls, or other commerce environment, and e) comparisons against Ariba, CommerceOne, Commerce Exchange, and Ebay, but does not disclose transmitting a purchase admission notification to the intending purchasers selected in said selecting step. Fisher teaches a system and method for conducting a multi-bidder, interactive auction (see at least abstract; Fig. 1 and 2). Fisher teaches a) obtaining supply information from at least one supplier and storing and storing supplier's minimum bid and supplier's list price (see at least Fig. 2; Fig. 4 (30); Figs. 9-11 (93); col. 6, lines 20-30; col. 10, lines 12-14), b) receiving purchase wish information and storing bidder submits bids (see at least Fig. 2 (Current high bidder's table); Fig. 4 (31); Fig. 5 (46); Fig. 9 (91); Fig. 10 (111); Fig. 11 (131); col. 7, lines 42-49; col. 10, lines 6-62); c) predetermined time period such as bid closing and "over a period of time" (see at least col. 4, lines 20-25); and c) selecting optimum combination; comparing the desired purchase price and desired purchase quantity by ranking bids in descending order by price (see at least Fig. 9 (91); Fig. 10 (111)), ranking

bids in descending order by price and quantity (see at least Fig. 11 (131)), and accumulating rolling quantity for commodity quantity allocation (see at least Figs. 9-12 (94)), and further teaches transmitting notification: notification on bids to keep participants updated (please note: prudent customer convenience) (see at least Fig. 4 (24, 27); col. 8, lines 15-29). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify Brodsky to transmit notification to intending purchasers as taught by Fisher, in order to keep intending purchasers updated, and thereby provide a prudent purchaser convenience.

Pertaining to claims 6-10

Rejection of claims 6-10 is based on similar rationale as noted above.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Pond whose telephone number is 571-272-6760. The examiner can normally be reached on 8:30AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Jeff Smith be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3625

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Robert M. Pond', is written over a horizontal line.

Robert M. Pond
Primary Examiner
May 13, 2007